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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE BOARD OF TRUSTEES, in their
capacities as Trustees of the LABORERS
HEALTH AND WELFARE TRUST FUND
FOR NORTHERN CALIFORNIA;
LABORERS PENSION TRUST FUND FOR
NORTHERN CALIFORNIA; LABORERS
VACATION-HOLIDAY TRUST FUND FOR
NORTHERN CALIFORNIA; and LABORERS
TRAINING AND RETRAINING TRUST
FUND FOR NORTHERN CALIFORNIA,

Plaintiffs,

v.

ROBERTSON INDUSTRIES, INC., an Arizona
Corporation,

Defendant.

No.

**COMPLAINT FOR BREACH OF
CONTRACT, DAMAGES AND AUDIT
(ERISA 29 U.S.C. § 1001, ET SEQ., 29
U.S.C. § 185)**

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1 Plaintiffs complain of Defendant, and for cause of action allege:

2 **JURISDICTION AND INTRADISTRICT ASSIGNMENT**

3 I.

4 This action arises under and is brought pursuant to section 502 of the Employee
5 Retirement Income Security Act, as amended (ERISA) (29 U.S.C. § 1132), and section 301 of the
6 Labor Management Relations Act (LMRA) (29 U.S.C. § 185). Venue properly lies in this district
7 court since contributions are due and payable in the County of San Francisco. Therefore,
8 intradistrict venue is proper.

9 **PARTIES**

10 II.

11 At all times material herein, Plaintiffs The Board of Trustees were Trustees of the
12 Laborers Health and Welfare Trust Fund for Northern California (hereinafter “Welfare Fund”);
13 Laborers Vacation-Holiday Trust Fund for Northern California (hereinafter “Vacation Fund”);
14 Laborers Pension Trust Fund for Northern California (hereinafter “Pension Fund”); and Laborers
15 Training and Retraining Trust Fund for Northern California (hereinafter “Training Fund,”
16 together with the Welfare Fund, Vacation Fund, and Pension Fund, collectively referred to as
17 “Trust Funds”). At all times material herein, each of the above-named Trust Funds was, and now
18 is, an employee benefit plan created by a written Trust Agreement subject to and pursuant to
19 section 302 of the LMRA (29 U.S.C. § 186), and a multi-employer employee benefit plan within
20 the meaning of sections 3, 4 and 502 of ERISA (29 U.S.C. §§ 1002, 1003 and 1132). Each of the
21 above-named Trust Funds is administered by a Board of Trustees which may bring this action in
22 the name of the Trust Funds pursuant to the express provisions of the Trust Agreements. All of
23 the above named Trust Funds and their respective Board of Trustees shall hereinafter be
24 designated collectively as “Plaintiffs.”

25 III.

26 At all times material herein, Robertson Industries, Inc., an Arizona Corporation
27 (hereinafter referred to as “Defendant”), has conducted business in California and has been an
28 employer within the meaning of section 3(5) and section 515 of ERISA (29 U.S.C. §§ 1002(5),

1 1145) and an employer in an industry affecting commerce within the meaning of section 301 of
 2 the LMRA (29 U.S.C. § 185).

3 **ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF**

4 IV.

5 At all relevant times, Defendant was signatory and bound to a written collective
 6 bargaining agreement with the Northern California District Council of Laborers (hereinafter
 7 “Union”), a labor organization within the meaning of section 301 of the Labor Management
 8 Relations Act (29 U.S.C. § 185). Defendant became subject to all the terms and conditions of the
 9 Laborers Master Agreement (hereinafter “Master Agreement” or “Agreement”) by virtue of
 10 signing subcontractor agreements (hereinafter “Subcontractor Agreement) with contractors bound
 11 to the Master Agreement; and by virtue of signing a Memorandum of Agreement (hereinafter
 12 “Memorandum Agreement”) with the Union, which incorporated by reference the Master
 13 Agreement. A true and correct copy of the 2014-2019 Master Agreement by and between the
 14 Associated General Contractor of California, Inc, and the Northern District Council of Laborers is
 15 attached hereto as Exhibit “A,” true and correct copies of the Subcontractor Agreements are
 16 attached hereto as Exhibit “B” and Exhibit “C,” and a true and correct copy of the Memorandum
 17 Agreement is attached hereto as Exhibit “D,” all of which are incorporated by reference herein.
 18 The Master Agreement by its terms incorporates the various Trust Agreements establishing each
 19 of the Trust Funds. By said Master Agreement, Defendant promised that it would contribute and
 20 pay to Plaintiffs the hourly amounts required by said Agreements for each hour paid for or
 21 worked by any of its employees who performed any work covered by said Agreements, and that it
 22 would be subject to and bound by all of the terms, provisions, and conditions of the Trust
 23 Agreements as incorporated by the terms of the Master Agreement.

24 V.

25 The above-mentioned Agreements provide for prompt payment of all employer
 26 contributions to the various Trust Funds and provide for the payment of interest on all delinquent
 27 contributions, attorneys’ fees, and other collection costs, and for the audit of the signatory
 28 employer or employers’ books and records in order to permit the Plaintiffs to ascertain whether

1 all fringe benefit contributions have been timely paid as required by the applicable labor
2 agreements and law.

3 **FIRST CLAIM FOR RELIEF**
4 **(BREACH OF CONTRACT)**

5 VI.

6 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

7 VII.

8 Pursuant to the Master Agreement and the Trust Agreements, an audit of the books and
9 records of Defendant for the period of May 2014 to October 2015 was conducted, which revealed
10 that fringe benefit contributions to the Trust Funds have not been submitted as required by said
11 agreements.

12 VIII.

13 Demand has been made of Defendant for payment of the amounts determined to be due
14 and owing pursuant to the audit, and Defendant has refused to pay such amounts and there is now
15 due, owing and unpaid to Plaintiffs Trust Funds from Defendant, fringe benefits contributions in
16 the amount of \$5,853.88; liquidated damages and interest in the amount of \$4,013.48; and
17 liquidated damages' fees in the mount of \$300.00.

18 IX.

19 Plaintiffs are the intended third-party beneficiaries of the Agreement, but Trust Fund
20 contribution delinquencies are excluded from the arbitration provisions of the Agreement.

21 X.

22 Plaintiffs have complied with all conditions on their part to be performed under the terms
23 of the applicable agreements.

24 XI.

25 Plaintiffs are entitled to reasonable attorneys' fees, interest, and other reasonable expenses
26 incurred in connection with this matter due to Defendant's failure and refusal to pay all fringe
27 benefit contributions due and owing pursuant to the terms of the applicable Labor Agreements,
28 Trust Agreements, and ERISA section 502(g)(2) (29 U.S.C. § 1132(g)(2)).

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2 **SECOND CLAIM FOR RELIEF**
3 **(ACTUAL DAMAGES FOR BREACH OF CONTRACT)**

4 XII.

5 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

6 XIII.

7 Defendant has failed, neglected and refused to make timely fringe benefit contributions as
8 required by the applicable Master Agreement and Trust Agreements, and has caused Plaintiffs
9 actual damages to be proven at the time of trial.

10 **THIRD CLAIM FOR RELIEF**
11 **(AUDIT)**

12 XIV.

13 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

14 XV.

15 Plaintiffs believe that additional amounts may be due and owing and also pray for an audit
16 to determine same.

17 **WHEREFORE**, Plaintiffs pray for judgment against Defendant, Robertson Industries,
18 Inc., as follows:

19 1. That Defendant be ordered to pay contributions in the amount of \$5,853.88, plus
20 interest thereon; liquidated damages and interest in the amount of \$4,013.48; and liquidated
21 damages fees in the mount of \$300.00;

22 2. That Defendant be ordered to pay actual damages according to proof;

23 3. That this Court issue an Order directing and permanently enjoining Defendant to
24 submit to the Trust Funds, all reports and contributions due and owing by Defendant, plus
25 interest, attorneys' fees, and costs as provided in ERISA sections 502(a)(3) and (g)(2) (29 U.S.C.
26 § 1132(a)(3), (g)(2);

27 4. That this Court issue an Order permanently enjoining Defendant for so long as it
28 remains obligated to contribute to the Trust Funds, from failing, neglecting, or refusing to timely
submit required monthly contributions reports and payments as required by the terms of the
collective bargaining agreements, Trust Agreements and ERISA sections 502(a)(3) and (g)(2) (29

1 U.S.C. § 1132(a)(3), (g)(2));

2 5. That Defendant be ordered to pay attorneys' fees;

3 6. That Defendant be ordered to pay costs of suit herein;

4 7. That this Court grant such further relief as this Court deems just and proper; and

5 8. That this Court retain jurisdiction of this matter to enforce the Order compelling an

6 Audit and payment of all amounts found due and owing.

7 Dated: August 28, 2018

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

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9 By: /s/ Tracy L. Mainguy
10 TRACY L. MAINGUY
Attorneys for Plaintiffs

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